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In re Application of : DECISION ON
SKRYABIN et al :
Application No.: 10/577,971 :
PCT No.: PCT/AU2004/001513 :
Int. Filing Date: 03 November 2004 : RENEWED PETITION
Priority Date: 03 November 2003 :
Attorney's Docket No.: GRIHAC P47AUSUS :
For: MULTILAYERED PHOTOVOLTAIC... :
ENVELOPE SURFACE : UNDER 1.47(a)

This is in response to the "RENEWED PETITION UNDER 37 CFR 1.137(a)" filed on 18 August 2008, which is being treated as a renewed petition under 37 CFR 1.47(a).

BACKGROUND

In a decision from this Office on 20 June 2008, the petition under 37 CFR 1.47(a) was erroneously granted under 37 CFR 1.47(a) even though petitioner filed a defective declaration. The decision stated that the application could not enter into the national stage processing because of the defective declaration.

On 18 August 2008, petitioner filed the current renewed petition that included a copy of the executed declaration filed on 05 May 2008 now initialized.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The renewed petition has still not satisfied item 4 under 37 CFR 1.47(a).

The declaration filed on 05 May 2008 by petitioner and signed by Igor SKRYABIN is defective because there is an alteration on it – applicant crossed the section of the declaration that has the power of attorney on the first page. Any alteration made after the signing of an oath or declaration must be supported by a supplemental oath or declaration under §1.67 or must be initialized by said inventor and dated. Note 37 CFR §1.52.

Although, the declaration has now been initialized and dated but this is with respect to a copy of the executed declaration (not the original copy) and after the original declaration had been filed with the USPTO. Because the altered executed was not initialized and dated at the time of signing this subsequent action to a copy of the original declaration does remedy the defect. Accordingly, petitioner will need to file a new supplemental executed declaration.

Consequently, the petition has not met the requirements under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time are available under 37 CFR 1.136(a). Failure to timely file the proper response will result in ABANDONMENT.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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